HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.152 of 2007

Between:

Chenchali Mallaiah & another

... Appellants

And

The Deputy Collector &
Mandal Revenue Officer,
Hayatnagar Mandal, R.R. District

... Respondent

::JUDGMENT::

Counsel for the appellants : Shri P. Thirumala Rao

Counsel for the respondent : Government Pleader for Revenue

February 13, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 03-01-2007 passed by the learned Single Judge, whereby he disposed of the writ petition filed by the appellants questioning the legality of proceedings dated 19-06-2006 issued by Deputy Collector and Mandal Revenue Officer, Hayathnagar Mandal, Ranga Reddy District (the respondent herein) by relegating the appellants to the alternative remedy of appeal under Section 4A of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short, 'the Act').

Although the appeal has been listed for admission hearing, with the consent of the learned counsel for the

parties, we have heard arguments on the merits of the case and are finally deciding the appeal.

In the affidavit filed by him in support of the writ petition, appellant No.1 averred that land measuring Ac.2.00 comprised in Survey No. 10/2 situated at Batasingaram Village, Hayathnagar Mandal, Ranga Reddy District was assigned to his father late Chanchali Shivaiah in the year 1959 and his brother was assigned Ac.0.19 guntas in Survey No.10/49; that after the death of his brother in 1962 (brother died intestate and issueless) and of father in 1966, the lands were divided among the brothers (the appellants herein); that patta certificate and pattedar pass book were issued in their favour; that the assignment was cancelled by the non-petitioner (the respondent herein) vide his orders dated
19-06-2006 without giving notice and opportunity of hearing and that the orders cancelling the assignment were not served on them. Appellant No.1 further averred that after obtaining the copies of orders from the Panchayat Secretary on 12-12-2006, he and his brother were seeking intervention of the Court for nullification of the same on the ground of violation of the provisions contained in the Act and the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 1977 as also the principles of natural justice. In paragraphs 3 and 4 of his affidavit (paragraph 4 is wrongly mentioned as 5), appellant No.1 averred as under:

> " 3. The petitioner submits that the respondent along with other officials came to the petitioners' lands in the 1st week of December, 2006 and told them that the lands belonged to the Government and that the petitioners have to vacate the same

immediately. The respondent did not issue any notice to the petitioners nor made any enquiries in respect of their claim. Since there was standing crop on the lands of the petitioners along with other locals resisted the highhanded and illegal attempts of the respondent. The petitioners upon advice immediately made enquiries as to object and purport of the respondent's claim. The petitioners were shocked to know that the assignment pattas granted to their father Late Shivaiah have been cancelled and that resumption orders have been passed in respect of the lands. After persuading several officials, the petitioners were supplied with the copy of the order in Progs. No.C/855/2005 DT:19.06.2006 and Progs.No.C/886/2005 Dt.19.06.2006 by the Panchayat Secretary on 12.12.2006.

4. It is submitted that on receipt of the copy the petitioners came to know that the assignment pattas granted to their father Late Shivaiah and elder brother Late Chenchai Muthaiah have been cancelled and that the resumption order was passed on 19.06.2006 and that Form I notice was affixed on the office of the Gram Panchayat. The petitioners have not been given any notice of the proceedings and have not been provided with an opportunity to participate in the enquiry which is discernibly evident from the impugned order. It has been alleged and assumed by the authorities that the usage/nature of the land has been changed into non agriculture and has been further converted into plots and sold away to others. The petitioners categorically deny the said allegation and submit that the petitioners are cultivating their lands even as on today. The petitioners as well as their forefathers have been permanent residents of Batasingaram village and are well known among the locals of the village despite which the respondent

> officials malafidely and deliberately did not serve the notice to them instead affixed the same on the office of the Gram Panchayat and conducted the entire proceedings behind their back. The respondent's action smacks of perversity and malice. "

The learned Single Judge did not issue formal notice to the respondent requiring him to file counter affidavit to admit or controvert the assertions contained in the affidavit of the appellants and disposed of the writ petition on the basis of oral assertion made by the learned Government Pleader that the assignment was cancelled after issuing notice, which was affixed on the notice board of the Gram Panchayat of Batasingaram Village. The learned Single Judge also observed that the writ petitioners can avail the remedy of appeal against the orders of cancellation and there was no justification to entertain the grievance made by them in the writ petition.

In our opinion, keeping in view the uncontroverted averments contained in the affidavit of the appellants, the learned Single Judge ought not to have disposed of the writ petition by relegating the appellants to the alternative remedy of appeal. There cannot be any doubt that cancellation of the assignment after a gap of 38 years seriously affected the appellants' right to property. Therefore, before ordering resumption, the competent authority was duty bound to comply with the statutory provisions and the rules of natural justice. In the affidavit filed by him, appellant No.1 had categorically averred that they were not given any notice of the proceedings initiated by the respondent for cancellation of the assignment. This assertion remained

uncontroverted because, as mentioned above, the respondent did not get opportunity to file counter affidavit. In the absence of a specific counter, the observation made by the learned Single Judge that a serious disputed question of fact arises for determination by the Court and for that purpose, the proceedings under Article 226 were not proper cannot but be termed as erroneous. If the appellants' version regarding non-service of notice and denial of opportunity of hearing is correct, then they cannot be asked to avail the alternative remedy of appeal, because it is settled law that the rule of alternative remedy is not applicable to the cases in which the petitioner comes up with the complaint that he has been deprived of his legal or constitutional right without being heard – **Baburam v. Zilla Parishad**[1] and **Harbanslal Sahnia v. Indian Oil Corporation Ltd**[2].

For the reasons mentioned above, the appeal is allowed. The order of the learned Single Judge is set aside and the writ petition is admitted for hearing.

At this stage, learned Government Pleader for Revenue submitted that the writ petition may be disposed of by setting aside orders dated 19-06-2006 with liberty to the respondent to pass fresh orders after complying with the provisions of the Act and the rules of natural justice.

In our opinion, the submission made by the learned Government Pleader is most reasonable and merits acceptance. Hence, instead of remanding the case to the learned Single Judge for fresh adjudication, we deem it proper to set aside orders dated 19-06-2006 passed by

the respondent with liberty to pass fresh orders after giving notice and opportunity of hearing to the appellants. Ordered accordingly.

As a sequel to disposal of the appeal, WAMP No. 255 of 2007 filed by the appellant for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

February 13, 2007
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[1] AIR 1969 SC 556
[2] (2003) 2 SCC 107